In the premises and for the reasons we have given we allowed the respondents' motion and dismissed this appeal with costs and directed that the deposit lodged in court by way of security be paid out to the respondents to account of their taxed costs.

Appeal dismissed.

Solicitors: *Baharuddin, Bernatt, Tan & Ker; C.C. Aiyathurai & Co.*

FADZIL BIN MOHAMED NOOR v. UNIVERSITI TEKNOLOGI MALAYSIA

[F.C. (Raja Azlan Shah C.J. (Malaya), Abdul Hamid F.J. & Abdoolcader J.) May 22 & June 16, 1981]

[Kuala Lumpur — Federal Court Civil Appeal No. 128 of 1980]

Administrative Law — Application for declaration — Purported dismissal by University Council ultra vires, illegal and void — Disciplinary proceedings — To be exercised by Disciplinary Committee — University Council has no power to exercise disciplinary powers — Purported dismissal of lecturer void — Constitution of Universiti Teknologi Malaysia, ss. 4(1) & 16 — University and University Colleges Act, 1971, ss. 7, 16A & 16C.

Labour Law — Dismissal of assistant lecturer in University — Status supported by statute — Entitlement to protection of hearing before appropriate disciplinary committee — Purported dismissal by University Council void — Constitution of Universiti Teknologi Malaysia, ss. 4(1) & 16 — University and University Colleges Act, 1971, ss. 7, 16A & 16C.

Practice and Procedure — Summary judgment — Action for declaration to declare purported dismissal of University lecturer ultra vires, illegal and void — Construction of documents — Interpretation of statutory provisions — Application for summary judgment granted — R.H.C. 1980, O. 14.

In this case the appellant who was an Assistant Lecturer in the Universiti Teknologi Malaysia applied for leave to contest the elections in the General Election. He was granted leave but finding the period insufficient he requested an extension of leave which was refused. The appellant did not receive the letter refusing the leave but he nevertheless proceeded to take the leave. Subsequently he was asked by the Secretary of the Disciplinary Committee of the University to show cause why disciplinary action should not be taken against him. He replied giving his explanation. He then received a letter stating that the University Council had considered the decision of the Disciplinary Committee and had decided to terminate his employment. The appellant filed a specially indorsed writ for a declaration that the purported dismissal by the respondents was *ultra vires*, illegal and void. He then applied for summary judgment. This application was dismissed by the High Court and he appealed to the Federal Court.

Held: (1) by virtue of section 7(2) and 16A of the University and University Colleges Act, 1971, the disciplinary powers under the Constitution of the University are exercisable only by the Disciplinary Committee and the purported exercise of jurisdiction by the University Council in dismissing the appellant was *ultra vires* its powers;

(2) the appellant as an assistant lecturer appointed by the University, has a status supported by statute and was entitled to the protection of a hearing before the appropriate disciplinary authority, including the right of appeal to the University Council from the decision of that authority. If that right is violated then the court may allow declaratory relief enabling him to retain his employment and continued eligibility to be paid his salary and all emoluments from the date of the purported dismissal;

(3) in an Order 14 case, where it turned on the construction of a few documents and the court was only concerned with what was the true construction, there could be no reason to go formally to trial where no further facts could emerge which would throw light on the documents that had to be construed;

(4) on the view taken by the court as to the construction of the University and University Colleges Act, 1971 and the Constitution of the University, the University had a hopeless case and the application for summary judgment should be granted, as no useful purpose could be served by going formally to trial.

Cases referred to:-

(1) *Attorney-General* v. *Leeds Corporation* [1929] 2 Ch. 291.

(2) *Public Textiles Bhd.* v. *Lembaga Letrik Negara* [1976] 2 M.L.J. 58.

(3) *Ridge* v. *Baldwin* [1963] 2 All E.R. 66.

(4) *Malloch* v. *Aberdeen Corporation* [1971] 2 All E.R. 1278, 1294.

(5) *Harry Tong Lee Hua* v. *Yong Kah Chin* [1981] 2 M.L.J. 1.

(6) *Esso Standard Malaya Bhd.* v. *Southern Cross Airways (M) Bhd.* [1972] 1 M.L.J. 168.

FEDERAL COURT.

Peter Mooney (*Mrs. S.S. Jegathesan* with him) for the appellant.

V. George for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah C.J. (Malaya) (delivering the judgment of the Court): This appeal is against the judgment of the learned judge dismissing an application by the plaintiff (appellant before us) for summary judgment in an action brought by the appellant against the Universiti Teknologi Malaysia (respondents before us) for a declaration that the purported dismissal by the respondents (whom we shall call "the University") of the appellant was *ultra vires*, illegal and void and that the appellant is entitled to be paid his salary and all emoluments as from the date of the purported dismissal.

The appellant was during the material period an Assistant Lecturer employed by the University. He was granted leave for period 21st to 24th June, 1978 for the purpose of participating in the General Election. As he found the period insufficient he sent a telegram requesting for extension of leave which request was refused. Unfortunately, the letter refusing the leave was never received by the appellant but nevertheless he proceeded to go on leave without approval. On July 13, 1978 the Secretary of the Disciplinary Committee wrote a letter to the appellant to show cause in writing why disciplinary action should not be taken against him. On July 25, 1978 he replied giving his explanation. After a period of 8 months the appellant received a letter dated February 13, 1979 stating that the University Council at its meeting held on January 22, 1979 considered the decision of the Disciplinary Committee on the complaint regarding the appellant's absence without leave and the University Council decided to terminate his employment with effect from February 15, 1979. We reproduce excerpts of the said letter:

"Encik Fadzil bin Mohd. Noor, Pusat Pengajian Kemanusiaan, Universiti Teknologi Malaya.

Tuan,

Adalah dimaklumkan Majlis Universiti Teknologi Malaysia telah pun mengadakan satu Mesyuarat Khas pada 22hb. Januari, 1979 bagi menimbangkan perakuan yang dikemukakan

oleh Lembaga Jawatankuasa Tatatertib mengenai tuduhan bahawa tuan telah mengengkari arahan pihak Universiti dan seterusnya tidak hadir bertugas tanpa kebenaran daripada 26hb. Jun hingga 10hb. Julai, 1978.

....

Setelah mengkaji perkara ini dengan teliti Majlis telah mendapati bahawa adalah sabit kesalahan tuan terhadap tuduhan mengengkari arahan pihak Universiti dan seterusnya tidak hadir bertugas tanpa kebenaran daripada 26hb. Jun, 1978 hingga 10hb. Julai, 1978.

... Oleh demikian dengan sabitnya kesalahan tuan itu Majlis berpendapat tidaklah ada jalan lain yang sesuai diambil melainkan tuan dibuang kerja. Dengan itu inilah di-maklumkan bahawa tuan adalah dibuang kerja oleh Majlis Universiti Teknologi Malaysia mulai daripada 15hb. Februari, 1979.

Yang benar,

Sd. (AINUDDIN BIN ABDUL WAHID)

Naib Cansellor.

b.p. Majlis Universiti Teknologi Malaysia."

On July 17, 1979 the appellant filed a specially endorsed writ in which he asked for a declaration mentioned above. On August 8, 1979 he unsuccessfully applied by way of summons-in-chambers for summary judgment in terms of the statement of claim.

The argument on the appeal ranged over wide matters, but as it developed it became apparent that the appeal should be disposed of on a ground relating to *ultra vires* and that it was unnecessary to call on counsel to argue other issues.

The question of whether or not the purported dismissal was validly made is now in substance the question raised in this appeal.

It is plain from the course of events, as set out in the judgment of the learned judge, that the whole matter was dealt with by the Disciplinary Committee, purporting to act as the delegate of the University Council. Thus the question arises whether the disciplinary authority of the University in respect of a member of the staff was in law a delegated power of the Disciplinary Committee. The learned judge seems to think that the disciplinary authority is vested in the University Council and that the Council had power to delegate and did in fact delegate it to the Disciplinary Committee by virtue of section 16A of the Universities and University Colleges Act, 1971 (Act 30 of 1971). He found some support for this conclusion in the language of subsection (5) of section 16A of the Act which provides for the right of appeal of any person dissatisfied with the decision of the Disciplinary Committee to the University Council and which he construed as not restricting the power of the University Council to appoint or dismiss officers and staff of the University as conferred by its Constitution. Section 4(1)(m) and section 16 of the Constitution of the University were also referred to and applied. The difficulty in the way of this conclusion is that it finds no support from the language used in the Act or Constitution.

We are of the view that this appeal turns ultimately, and we think exclusively, on the proper meaning and operation of sections 7, 16A and 16C of Act 30 of 1971 and section 4(1)(m) and section 16 of the Constitution of the University. We reproduce the relevant provisions in some detail:

"Section 7.(1) Upon the coming into force of the Incorporation Order ... a University, ... established, ... and shall be deemed to have been constituted a body corporate ... with full power and authority....

(e) to exercise, discharge and perform all such powers, duties and functions as may be conferred or imposed on the University by this Act or the Constitution.

(2) The powers conferred on a University by subsection (1) shall, unless otherwise expressly provided by this Act or the Constitution, be exercised by the University Council.

Section 16A.(1) Subject to subsection (4), the disciplinary authority of the University in respect of every member of the staff, ... shall be the Disciplinary Committee of the University which shall consist of —

(a) the Vice-Chancellor; and

(b) two members of the University Council elected by the University Council.

(2) In the exercise of its disciplinary functions, the Disciplinary Committee shall have the power to take such disciplinary action and impose such disciplinary punishment as may be provided for under any disciplinary rules that may be made by the University Council under section 16C....

(5) Any member of the staff, officer or employee of the University who is dissatisfied with the decision of the Disciplinary Committee or of any person or board delegated with functions, powers or duties under subsection (3) may appeal against such decision to the University Council which may give such decision thereon as it deems fit and proper.

Section 16C. (1) The University Council shall have the power to make such disciplinary rules as it deems necessary or expedient to provide for the discipline of the members of the staff, ...; the disciplinary rules made under this subsection shall be published in the Gazette....

(3) The disciplinary rules made under this section shall create such disciplinary offences and provide for such disciplinary punishments as the University Council may deem appropriate, and the punishments so provided may extend to dismissal or reduction in rank in the case of members of the staff, officers or employees of the University, and expulsion from the University in the case of students of the University."

It may be noted the disciplinary rules, contained in a detailed and elaborate code which prescribes the procedure, which is fair and appropriate, to be followed when there is an allegation of a disciplinary offence, were gazetted only on February 15, 1979 (P.U. (A) 22/79), that is on the same day the purported dismissal was made by the University Council. Therefore at the material time there were no disciplinary rules, and as such, no known disciplinary offences created and no known disciplinary punishments provided.

The powers conferred on the University as defined in section 7(1)(e) of Act 30 of 1971 are enumerated in section 4 of the Constitution of the University — (P.U.(A) 231 of 1976): Subsection (1) reads:

"4. (1) The University shall, subject to the provisions of this Constitution, have the following powers —

....

(m) to appoint, promote and discipline officers, teachers and staff of the University;"

By virtue of the provisions of sections 7(2) and 16A of the parent Act, disciplinary powers under this provision of the Constitution are exercisable only by the Disciplinary Committee.

The powers of the University Council are contained in section 16 of the Constitution. It reads:

"The Council shall be the executive body of the University, and may exercise all the powers conferred on the University, save in so far as they are by this Constitution or the Statutes, Acts and Regulations conferred on some other Authority or body or on some officer of the University: ...."

This provision in the Constitution constitutes the University Council as the executive body of the University and not the disciplinary authority and must necessarily be limited in scope and read in the light of the relevant provisions of the enabling Act we have just referred to.

The University was incorporated under Act 30 of 1971. It is a corporate body, and as such it can only do such acts as are authorised directly or indirectly by the statute creating it: see *Attorney-General* v. *Leeds Corporation.*[1] In *Public Textiles Bhd.* v. *Lembaga Letrik Negara*[2] this court said in relation to a corporation that whatever is not permitted expressly or by necessary implication by the incorporating statute is prohibited not by the express or implied prohibition of the legislature but by the principle of *ultra vires.* Therefore the university authority can only act in pursuance of the powers given to it by law. It follows that it has to follow proper procedure as prescribed by law before condemning an erring member of the staff. If it goes outside its limit of operation, or is not warranted by it, then any decision made by it is *ultra vires.*

To elaborate somewhat, the University Council in the present case is the executive body of the University. It may exercise all the powers conferred on the University by Act 30 of 1971 or the Constitution. But such powers are circumscribed. Subsection (2) of section 7 of the Act enacts "unless otherwise expressly provided by this Act or the Constitution." The general powers of the University Council do not by virtue of section 16A of the Act extend to disciplinary matters. Such matters are conferred on and vested in the Disciplinary Committee alone. That committee must itself take the responsibility of deciding a disciplinary case, that is to say, the charge and the consequences of a positive finding upon it. The University Council's limited role in this matter is as an appellate body exercising judicial function for the determination of appeals from any decisions of the Disciplinary Committee. It is, therefore, obvious that the functions of these two bodies are separate and distinct. The Act deals with the situation in language which could scarcely be plainer. And it pointedly omits any reference to delegation. It prescribes the bodies who are to be the disciplinary authority and the appellate authority. Such being their respective jurisdiction, we are of the opinion that the purported exercise of jurisdiction by the University Council in dismissing the appellant was *ultra vires* its powers. The University Council was purporting to do the very thing which, by Act 30 of 1971 and the Constitution, it was prohibited from doing.

It was further argued that since there were no disciplinary rules at the material time and therefore no disciplinary action that could be taken by the Disciplinary Committee, the power of disciplinary dismissal was still vested in the University Council. As such the University Council could dismiss the appellant under the master and servant principle. In *Ridge* v. *Baldwin*[3] Lord Reid developed the point in an illuminating way. He said, *inter alia,* that in a pure master and servant case, dismissal is governed by the law of contract *inter partes* and there is no right to be heard. In other words, in a pure master and servant relationship, the principles of administrative law, including those of natural justice have no part to play. The administrative law remedies, such as a declaration that the dismissal is *ultra vires* is not available; no order for reinstatement can be made. The most that can be obtained is damages, if the dismissal is wrongful. In *Malloch* v. *Aberdeen Corporation,*[4] Lord Wilberforce took that point to mean "cases in which there is no element of public employment or service, no support by statute, nothing in the nature of an office or a status which is capable of protection." In cases where such an element is present, Lord Wilberforce pointed out that "there may be essential procedural requirements to be observed, and failure to observe them may result in a dismissal being declared void." In that case the House of Lords held that a school teacher had a special status conferred on him by statute which converted him from being a public servant holding office at the pleasure of a public authority into a servant who, by virtue of his statutory position, had implied into that position the right to be heard. Lord Wilberforce stated (p. 1294):

> "The argument that, once it is shown that the relevant relationship is that of master and servant, this is sufficient to exclude the requirements of natural justice is often found.... A comparative list of situations in which persons have been held entitled or not entitled to a hearing, or to observation of rules of natural justice, according to the master and servant test, looks illogical and even bizarre."

Lord Wilberforce's speech is important because it opens the way for there to be a general application of the principles of natural justice to the employment relationship.

Clearly this is not a straight-forward case of master and servant. The appellant as an Assistant Lecturer employed by the University, has a status supported by statute and is entitled to the protection of a hearing before the appropriate disciplinary authority, including the right of appeal to the University Council from the decision of that authority. If that right is violated, as happened here, then the court may allow declaratory relief, enabling him to retain his employment, and continued eligibility to be paid his salary and all emoluments from the date of the purported dismissal. The point is, here, the appellant's employment had never been terminated. It would be open to the University at any time hereafter to dismiss him if it so chooses to do and does so in a lawful manner. Until it chooses to do that the appellant's contract of employment will continue. We find it hard to believe that in a field of employment such as the present, the legislature can really be said to have intended that the appellant is *ipso facto* to be deprived of his employment without any regard for vested right. To say that there were no disciplinary rules under which he could be charged is an argument which has only to be stated to be rejected.

We now consider the application for summary judgment. It was rightly raised by counsel for the University that the case turns on the interpretation of the provisions of Act 30 of 1971 and the Constitution of the University, and therefore the court ought to be very cautious in treating it under Order 14. We are disposed to agree with that argument for this reason; not that cases depending on the interpretation of a statute or statutes deserve any different treatment

from that of any other case under Order 14. An Order 14 order in the view we have always taken of it is a very stringent procedure because it shuts the door of the court to the defendant. The jurisdiction ought only to be exercised in proper cases. If the University and University Colleges Acts and related legislation come into an Order 14 case, no greater attention in principle is to be given by the court to that class of action than to any other class of action. The only point is that as everybody knows the pertinent legislation is long and complicated. But it is not sufficient under an Order 14 case to flourish the title of the University and University Colleges Act, etc., in the face of the court and say that is enough to give leave to defend. If a point taken under the Acts is quite obviously an unarguable point, and the court is satisfied that it is really unarguable, the court has precisely the same duty under Order 14 as it has in any other case. The court has the duty to apply the rule: (see *Harry Tong Lee Hwa* v. *Yong Kah Chin*[5]).

In *Esso Standard Malaya Bhd.* v. *Southern Cross Airways (M) Bhd.*[6] I pointed out that in an Order 14 case, where it turned on the construction of a few documents, and the court was only concerned with what, in its judgment, was the true construction, there could be no reason to go formally to trial where no further facts could emerge which would throw any light on the documents that had to be construed. We think we can safely apply that principle to the present case. On the view we have taken of the construction of Act 30 of 1971, and the Constitution of the University, the University had an absolutely hopeless case. The only function of the court is *jus dicere* and to ascertain the intention of Parliament from the words used in the statutes and nothing more. No useful purpose would then be served to go formally to trial.

We accordingly allowed the appeal.

Appeal allowed.

Solicitors: *Syed Ibrahim & Co.; Zain & Co.*

PAHANG SOUTH UNION OMNIBUS CO. BHD. v. MINISTER OF LABOUR AND MANPOWER & ANOR.

[F.C. (Raja Azlan Shah C.J. (Malaya), Abdul Hamid F.J. & Abdoolcader J.) May 23 & June 29, 1981]

[Kuala Lumpur — Federal Court Civil Appeal No. 82 of 1980]

Administrative Law — Certiorari — Claim for recognition of trade union — Decision of Minister — No error of jurisdiction — Certiorari does not lie.

Industrial Law — Recognition of trade union — Decision of Minister — No error of jurisdiction — Certiorari does not lie — Industrial Relations Act, 1967, s. 9(5).

Courts of Judicature Act, 1964, ss. 25(2), 35 and para. 1 to schedule — Industrial Arbitration Act, 1967, s. 9(5) — Whether conflicting.

In this case a trade union had applied for recognition by the appellants. The Minister after considering the result of a membership check by the Registrar of Trade Unions, accorded recognition to the trade union. The appellants applied for *certiorari* but the application was dismissed in the High Court. The appellants appealed.

Held: the Minister in this case had not erred at all and even if he had, it did not go to jurisdiction nor did he infringe the rules of natural justice. There was therefore no cause for justified complaint by the appellant.

Cases referred to:-

(1) *In re Bowman* [1932] 2 K.B. 621, 633.
(2) *Ohene Moore* v. *Akesseh Tayee* [1935] A.C. 72, 75.
(3) *General Electric Co.* v. *Price Commission* [1975] I.C.R. 1, 12.
(4) *Healey* v. *Minister of Health* [1955] 1 Q.B. 221.
(5) *In re H.K. (An infant)* [1967] 2 Q.B. 617, 630.
(6) *Reg.* v. *Gaming Board for Great Britain, ex parte Benaim and Khaida* [1970] 2 Q.B. 417.
(7) *Punton* v. *Ministry of Pensions and National Insurance* [1963] 1 W.L.R. 186.
(8) *Ashbridge Investments Ltd.* v. *Minister of Housing and Local Government* [1965] 1 W.L.R. 1320.
(9) *Padfield* v. *Minister of Agriculture, Fisheries and Food* [1968] A.C. 997, 1007, 1061.
(10) *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corporation* [1948] 1 K.B. 223.
(11) *Anisminic Ltd.* v. *Foreign Compensation Commission* [1969] 2 A.C. 147.
(12) *Sydney Municipal Council* v. *Campbell* [1925] A.C. 338.
(13) *Minister of Labour and Manpower* v. *Paterson Candy (Malaysia) Sdn. Bhd.* [1980] 2 M.L.J. 122, 124.
(14) *National Union of Hotel, Bar and Restaurant Workers* v. *Minister of Labour and Manpower* [1980] 2 M.L.J. 189, 191.
(15) *Foh Hup Omnibus Co. Berhad* v. *Minister of Labour and Manpower & Anor.* [1973] 2 M.L.J. 38, 39-40.
(16) *Mogah Bus Company* v. *Minister of Labour and Manpower and the Transport Workers Union.* K.L. High Court Originating Motion No. 40 of 1973.
(17) *United Kingdom Association of Professional Engineers & Anor.* v. *Advisory, Conciliation and Arbitration Service* [1980] 2 W.L.R. 254.
(18) *Mak Sik Kwong* v. *Minister of Home Affairs, Malaysia (No. 2)* [1975] 2 M.L.J. 175, 179, 181.
(19) *Lewis* v. *Heffer* [1978] 1 W.L.R. 1061, 1076-1077.
(20) *Bushell & Anor.* v. *Secretary of State for the Environment* [1980] 3 W.L.R. 22.
(21) *Regina* v. *Commission for Racial Equality, ex parte Cottrell & Rothon* [1980] 1 W.L.R. 1580.
(22) *South-East Asia Fire Bricks Sdn. Bhd.* v. *Non-Metallic Mineral Products Manufacturing Employees Union* [1980] 2 M.L.J. 165; 3 W.L.R. 318; 2 All E.R. 689.
(23) *Colonial Bank of Australasia* v. *Willan* [1874] L.R. 5 P.C. 417.
(24) *Essex Incorporated Congregational Church Union* v. *Essex County Council* [1963] A.C. 808, 834-835.

HIGH COURT.

S. Kulasegaran for the applicant.

Stanley Isaac (Federal Counsel) for the 1st respondent.

K. Chandran for the 2nd respondent.

Cur. Adv. Vult.

Wan Hamzah J.: On December 3, 1975 the Second respondent Union made a claim for recognition, and as a result the Registrar of Trade Unions carried out a membership check, which showed it represented 43.2% only of the employees of the applicant. Therefore the applicant refused to give recognition. The Union accepted the decision of the applicant and thus did not report the matter to the Minister under section 9(4) of the Industrial Relations Act and the Minister did not make any decision under section 9(5) in respect of that claim. Therefore section 12 did not apply